

# EXHIBIT 9

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK**

CYNTHIA L. HERBST, SOUND AIRCRAFT  
FLIGHT ENTERPRISES, INC., and SAS AUTO  
GROUP, INC.,

**Plaintiffs,**

**- against-**

STEVEN W. TUMA, Individually, SOUND  
AIRCRAFT SERVICES, INC., JOHN KELLY,  
Individually, SHORELINE AVIATION, INC.,  
And EDUARDO FERNANDES, Individually,

**Defendants.**

**Index No.  
Date Summons  
Filed:**

**SUMMONS WITH NOTICE**

**ACTION FOR BREACH OF CONTRACT AND TORTIOUS INTERFERENCE WITH  
CONTRACT**

To the Defendants:

YOU ARE HEREBY SUMMONED AND REQUIRED TO RESPOND TO THIS  
SUMMONS AND VERIFIED COMPLAINT and to the requests for relief made by the Plaintiffs  
by serving a written Notice of Appearance or Verified Answer on the Plaintiff's attorney, at the  
address stated below.

If this Summons with Notice was served upon you within the State of New York by  
personal delivery, you must respond WITHIN 20 DAYS after service, exclusive of the day of  
service. If this Summons with Notice was not personally delivered to you within the State of New  
York you must respond WITHIN 30 DAYS after service is complete in accordance with the  
requirements of the Civil Practice Law and Rules.

THE NATURE OF THIS ACTION IS TO OBTAIN A JUDGMENT AGAINST THE  
DEFENDANTS FOR BREACH OF CONTRACT AND TORTIOUS INTERFERENCE WITH  
CONTRACT.

Dated: August 13, 2018  
Westhampton, New York

Yours, etc.,

  
FREDERIC C. FOSTER, P.C.  
BY: FREDERIC C. FOSTER, ESQ.  
Attorney for Plaintiffs  
4 Montauk Highway  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

CYNTHIA L. HERBST, SOUND AIRCRAFT  
FLIGHT ENTERPRISES, INC., and SAS AUTO  
GROUP, INC.,

Plaintiffs,

**VERIFIED COMPLAINT**

Index No.

- against -

STEVEN W. TUMA, Individually, SOUND  
AIRCRAFT SERVICES, INC., JOHN KELLY,  
Individually, SHORELINE AVIATION, INC.,  
and EDUARDO FERNANDES, Individually,

Defendants.

Plaintiffs, through their attorneys, Frederic C. Foster, P.C., as and for a Verified Complaint,  
alleges:

1. The Plaintiff herein, Cynthia L. Herbst, is a resident of the State of New York, County of Suffolk and currently resides at 3705 Noyac Road, Unit D, Sag Harbor, NY 11963.
2. Sound Aircraft Flight Enterprises, Inc., and SAS Auto Group, Inc., are lawfully incorporated businesses with their principal place of business located at 200 Daniels Hole Road, Wainscott, New York 11975.
3. The Defendant herein, Steven W. Tuma, is a resident of the State of New York, County of Suffolk and currently resides at 7 Northviews Hill Ct., Sag Harbor, NY 11963.

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4. The Defendant herein, Sound Aircraft Services, Inc., is a lawfully incorporated business with its principal place of business located at 200 Daniels Hole Road, Wainscott, New York 11975.
5. The Defendant herein, Shoreline Aviation, Inc., is a lawfully incorporated business with its principal place of business located at 60 Thompson Avenue, East Haven, Connecticut 06512.
6. The Defendant herein, Eduardo Fernandes, is a resident of the State of New York, County of Suffolk and currently resides at 59 Glade Drive, East Hampton, NY 11937.
7. Upon information and belief, the Defendant herein, John Kelly, is the President of Shoreline Aviation, Inc.
8. Upon information and belief, the Defendant herein, John Kelly, is the owner of Shoreline Aviation, Inc.
9. Upon information and belief, the Defendant herein, John Kelly, is the operator of Shoreline Aviation, Inc.
10. Plaintiff, Cynthia Herbst, and Defendant, Steven Tuma, were divorced by the granting of a Judgment of Divorce signed by Suffolk County Supreme Court Justice Carol Mackenzie on July 19, 2017, which incorporated but did not merge the Stipulation of Settlement signed by the parties on April 27, 2017, and So-Ordered by the Honorable Carol Mackenzie on April 28, 2017.
11. Cynthia Herbst, f/k/a Cynthia Tuma, is the former wife of Steven Tuma, and Steven Tuma is the former husband of Cynthia Herbst.
12. Cynthia Herbst is the president and owner of Sound Aircraft Flight Enterprises and SAS Auto Group, Inc.

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13. Steven Tuma is the owner of Sound Aircraft Services, Inc.
14. Prior to the signing of the Stipulation of Settlement in April 2017, Sound Aircraft Flight Enterprises, Inc. utilized Shoreline Aviation, Inc., as its operator of flight services.
15. From April 2017 until May 2018, Plaintiff continued to retain and utilize Shoreline Aviation, Inc., as the operator of flight services.
16. Upon information and belief, John Kelly was aware that Plaintiff, Cynthia Herbst f/k/a Tuma, and Sound Aircraft Flight Enterprises, Inc., entered into a Stipulation of Settlement with Defendant, Steven Tuma, as part of their divorce settlement.
17. Upon information and belief, Defendant, John Kelly, was aware that Steven Tuma, his assigns or agents, agreed not to compete with Plaintiff, Cynthia Herbst and Sound Aircraft Flight Enterprises, Inc. regarding the sale of flight services.
18. On or about May 6, 2018, Shoreline Aviation, Inc. severed the business relationship between Shoreline Aviation, Inc. and Sound Aircraft Flight Enterprises, Inc.
19. Subsequently, Sound Aircraft Flight Enterprises, Inc. entered into a business relationship with another seaplane service provider.
20. Upon information and belief, in or about May 2018, John Kelly and/or Shoreline Aviation, Inc., entered into a lease agreement with Steven Tuma and/or Sound Aircraft Services, Inc.
21. Upon information and belief, John Kelly and/or Shoreline Aviation, Inc., entered into a license agreement with Steven Tuma and/or Sound Aircraft Services, Inc.
22. Upon information and belief, John Kelly and/or Shoreline Aviation, Inc., entered into a fee sharing arrangement regarding the sale of charter flight services with Steven Tuma and/or Sound Aircraft Services, Inc.

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23. In or about May, 2018, John Kelly and/or Shoreline Aviation, Inc., conspired with Steven Tuma and/or Sound Aircraft Services to interfere with the contractual rights of Cynthia Herbst and Sound Aircraft Flight Enterprises, Inc.

**AS AND FOR A FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

24. The Plaintiffs, CYNTHIA HERBST, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC., and SAS AUTO GROUP, INC., repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “23” as if each were fully set forth herein.

25. On or about April 27, 2017, Plaintiff, CYNTHIA HERBST, entered into a written agreement/ Stipulation of Settlement with the Defendant, STEVEN TUMA, which included a covenant not to compete located in Article 41 beginning on page 50. A copy of the Stipulation of Settlement agreement (hereinafter “Agreement”) is annexed hereto as **Exhibit “A”**.

26. Pursuant to Article 41 of the Agreement, it was agreed by and between the parties that Plaintiff, Cynthia Herbst, her assigns, or her agents, shall not engage in any way in the sale of aviation fuel or utilize the customer lists related thereto or conduct business reasonably like that which Sound Aircraft Services conducts for a period of five (5) years at East Hampton Airport.

27. Plaintiff, CYNTHIA HERBST, has not engaged in any way in the sale of aviation fuel or utilize the customer list related thereto or conducted business like that which Sound Aircraft Services conducts since the signing of Stipulation of Settlement.

28. Pursuant to Article 41 of the Agreement, it was agreed by and between the parties that Defendant, Steven Tuma, his assigns or his agents, shall not engage in any way in the

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sale of charter flights, sightseeing flights or flight training or use customer list related thereto, or conduct business reasonably like that which Sound Aircraft Flight Enterprises, Inc. and SAS Auto Group, Inc. conduct for a period of five (5) years at East Hampton Airport.

29. In or about May 2018, Defendant, STEVEN TUMA and/or SOUND AIRCRAFT SERVICES, INC., and/or JOHN KELLY, authorized Shoreline Aviation, Inc., to occupy a portion of his desk in the East Hampton Airport Terminal.
30. In or about May 2018, Defendants, STEVEN TUMA, JOHN KELLY and/or SHORELINE AVIATION, INC., erected a sign, partially blocking the Sound Aircraft Flight Enterprise desk.
31. The erected sign also advertised for Shoreline Aviation, Inc.
32. The erected sign also directed passengers to check in with Shoreline at the Sound Aircraft Service desk.
33. The Shoreline sign diverted passengers away from the Sound Aircraft Flight Enterprises' desk.
34. Upon information and belief, SHORELINE AVIATION, INC., is a tenant of Steven Tuma and Sound Aircraft Services, Inc.
35. Upon information and belief, SHORELINE AVIATION, INC., is a licensee of Steven Tuma and Sound Aircraft Services.
36. Upon information and belief, the Defendant, STEVEN TUMA, and JOHN KELLY/SHORELINE AVIATION, INC. entered into an agreement and/or joint venture for the sale of charter flights.

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37. Upon information and belief, Defendant, STEVEN TUMA, authorized Shoreline Aviation to utilize the client list, which is the exclusive property of the Plaintiff.
38. Plaintiff has suffered irreparable financial harm in the form of lost clients and business for the 2018 summer season.
39. The Plaintiffs have in no way contributed to or caused the breach of the agreement between Cynthia Herbst and Defendants, Steven Tuma and Sound Aircraft Services.

**AS AND FOR THE SECOND CAUSE OF ACTION FOR BREACH OF  
CONTRACT**

40. The Plaintiffs, CYNTHIA HERBST, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC., and SAS AUTO GROUP, INC., repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "39" as if each were fully set forth herein.
41. Pursuant to Article 41 of the Agreement, it was agreed by the parties that Defendant, STEVEN TUMA, his agents or assigns, would not conduct business reasonably like that which Sound Aircraft Flight Enterprises, Inc. and/or SAS Auto Group, Inc. conducts for a period of five (5) years at East Hampton Airport.
42. The parties further agreed that the continued business contract/operation between Sound Aircraft Services, Inc. and Enterprise Car Rental shall not be deemed a violation of this Agreement, and the covenant not to compete, or greater if there is an extension of the lease.
43. On or about June 6, 2018, employees of Sound Aircraft Services, Inc., assisted clients at the Hertz rental hub in the East Hampton Airport terminal.

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44. Thereafter, the actions of the employees of Sound Aircraft Services, Inc., continue to facilitate the rental of cars through Hertz.
45. Upon information and belief, Defendants, SOUND AIRCRAFT SERVICES, INC. and STEVEN TUMA, his agents or assigns, are working with Hertz rental in direct violation of the covenant not to compete.
46. Upon information and belief, Defendants, SOUND AIRCRAFT SERVICES, INC. and STEVEN TUMA, authorized his employees, agents or assigns to assist clients at the Hertz desk in direct violation of the Agreement.
47. The Plaintiff has suffered irreparable harm in the form of lost clients and business.
48. The Plaintiffs have in no way contributed to or caused the breach of the agreement between Cynthia Herbst and Defendants, Steven Tuma and Sound Aircraft Services, Inc.

**AS AND FOR THE THIRD CAUSE OF ACTION FOR TORTIOUS  
INTERFERENCE WITH CONTRACT**

49. The Plaintiffs, CYNTHIA HERBST, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC., and SAS AUTO GROUP, INC., repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "48" as if each were fully set forth herein.
50. On or about April 27, 2017, Plaintiff, CYNTHIA HERBST, entered into a written agreement/Stipulation of Settlement with the Defendants, STEVEN TUMA, whereby the parties agreed upon the distribution of Sound Aircraft Services, Inc., Sound Aircraft Flight Enterprises, Inc., and SAS Auto Group, Inc.
51. Pursuant to Article 40 of the Agreement, Plaintiff, CYNTHIA HERBST, waived any claim that she may have had for a distributive share of Sound Aircraft Services, Inc., and

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all its assets and bank accounts, which shall be the sole and exclusive property of the Husband.

52. Pursuant to Article 40 of the Agreement, Defendant, STEVEN TUMA, waived any claim that he may have had for a distributive share of Sound Aircraft Flight Enterprises, Inc. and SAS Auto Group, Inc., which shall be the sole and exclusive property of the Wife.
53. Upon information and belief, Defendants, SHORELINE AVIATION, INC., and JOHN KELLY, had actual knowledge that an agreement was reached between Cynthia Herbst and Steven Tuma.
54. Upon information and belief, Defendants, SHORELINE AVIATION, INC., and JOHN KELLY, operated their business exclusively with Plaintiff, CYNTHIA HERBST, from May 2017 to May 2018.
55. On or about May 2018, the Defendant, SHORELINE AVIATION, INC., severed the business relationship with Plaintiff, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC.
56. Upon information and belief, Defendants, STEVEN TUMA, and JOHN KELLY, individually, and on behalf of Defendant, SHORELINE AVIATION, INC., entered into an agreement, in which, Shoreline Aviation, Inc., was granted desk space from Sound Aircraft Services, Inc.
57. Upon information and belief, Defendants, JOHN KELLY and SHORELINE AVIATION, INC., used the desk space to book and sell charter flights.
58. Upon information and belief, Defendant, JOHN KELLY, individually and on behalf of SHORELINE AVIATION, INC., was aware of the Stipulation of Settlement between Plaintiff, CYNTHIA TUMA, and Defendant, STEVEN TUMA.

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59. Upon information and belief, Defendant, JOHN KELLY, individually, and on behalf of SHORELINE AVIATION, INC., was aware that Defendants, STEVEN TUMA and SOUND AIRCRAFT SERVICES, INC., was ordered to direct all charter flight operation to Plaintiff, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC..
60. Defendants, JOHN KELLY and SHORELINE AVIATION, INC., interfered with the business of Plaintiff, CYNTHIA HERBST and SOUND AIRCRAFT FLIGHT ENTERPRISES, INC.
61. Pursuant to Article 40 and 41 of the Agreement, the use of the desk space by JOHN KELLY and SHORELINE AVIATION, INC., to book and sell charter flights constituted a breach of contract by STEVEN TUMA.
62. Upon information and belief, Defendants, JOHN KELLY and SHORELINE AVIATION, INC., were aware of the covenant not to compete pursuant to Article 41 of the Agreement.
63. Upon information and belief, Defendants, JOHN KELLY and SHORELINE AVIATION, INC., intentionally interfered with Plaintiff, CYNTHIA HERBST'S and SOUND AIRCRAFT FLIGHT ENTERPRISES, INC.'s, business.
64. Upon information and belief, the interference was conducted intentionally as a result of the severing of the business relationship between Plaintiff, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC., and Defendant, SHORELINE AVIATION, INC.
65. As a result of the Defendants, STEVEN TUMA, SOUND AIRCRAFT SERVICES, INC., JOHN KELLY and SHORELINE AVIATION, INC., Plaintiffs, CYNTHIA HERBST, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC., and SAS AUTO GROUP, INC., suffered damages in the form of lost clients and business.

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**AS AND FOR THE FOURTH CAUSE OF ACTION FOR TORTIOUS  
INTERFERENCE WITH CONTRACT**

66. The Plaintiffs, Cynthia Herbst, Sound Aircraft Flight Enterprises, Inc., and SAS Auto Group, Inc., repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “65” as if each were fully set forth herein.
67. Defendant, EDUARDO FERNANDES, worked for Sound Aircraft Flight Enterprises, Inc. from May, 2017 to June 3, 2018.
68. During the course of Defendant’s employment with Sound Aircraft Flight Enterprises, Inc., EDUARDO FERNANDES had access to all client files.
69. These files included the customer lists for Sound Aircraft Flight Enterprises, Inc. charter flight and seaplane services.
70. On or about June 3, 2018, Defendant, EDUARDO FERNANDES, terminated his employment with Sound Aircraft Flight Enterprises, Inc.
71. Upon information and belief, on or about June 8, 2018, Defendant, EDUARDO FERNANDES, became employed by Defendants, JOHN KELLY and/or SHORELINE AVIATION, INC.
72. Thereafter, Defendant, EDUARDO FERNANDES, provided a copy of the customer list and/or computer files to Defendants, JOHN KELLY, SHORELINE AVIATION, INC., STEVEN TUMA, and SOUND AIRCRAFT SERVICES, INC.
73. Upon information and belief, Defendant, EDUARDO FERNANDES, was aware of the Agreement between Cynthia Herbst and Steven Tuma prior to the termination of his employment with SOUND AIRCRAFT FLIGHT ENTERPRISES, INC.

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74. Defendant, EDUARDO FERNANDES, intentionally conspired with Defendants, STEVEN TUMA and JOHN KELLY, to breach the Agreement set forth during the divorce of CYNTHIA HERBST and STEVEN TUMA.

75. Defendants, JOHN KELLY and STEVEN TUMA, used the customer list to contact clients of Plaintiff in direct violation of the Agreement between Cynthia Herbst and Steven Tuma.

76. As a result of the tortious interference, Plaintiffs, CYNTHIA HERBST, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC. and SAS AUTO GROUP, have suffered damages in the form of lost business and clients.

**WHEREFORE**, Plaintiff demands judgment against Defendant, said judgment to grant the following relief:

1. On the first cause of action, in favor of Plaintiff, CYNTHIA HERBST, and against Defendant, STEVEN TUMA, in the amount of Seven Hundred Fifty Thousand (\$750,000.00) Dollars pursuant to Article 41 of the Agreement, together with interest, attorney's fees, costs and expenses from the date of the breach.
2. On the second cause of action, in favor of Plaintiffs, CYNTHIA HERBST, and SAS AUTO GROUP, INC., and against Defendants, STEVEN TUMA and SOUND AIRCRAFT SERVICES, INC., in the amount of Seven Hundred Fifty Thousand (\$750,000.00) Dollars, including interest, attorney's fees, costs, and expenses from the date of the breach.
3. On the third cause of action, in favor of Plaintiffs, CYNTHIA HERBST, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC., and SAS AUTO GROUP, INC., and against Defendants, JOHN KELLY and SHORELINE AVIATION INC., in the amount

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of Two Million (\$2,000,000.00) Dollars, including interest, attorney's fees, costs, and expenses.

4. On the fourth cause of action, in favor of Plaintiffs, CYNTHIA HERBST, SOUND AIRCRAFT FLIGHT ENTERPRISES, INC., and SAS AUTO GROUP, INC., and against Defendants, JOHN KELLY, SHORELINE AVIATION INC., and EDUARDO FERNANDES, in the amount of Two Million (\$2,000,000.00) Dollars, including interest, attorney's fees, costs, and expenses.

5. For such other and further relief as this Court may deem just, proper, and equitable.

Dated: August 13, 2018

**FREDERIC C. FOSTER, P.C.**  
Attorney for Plaintiffs  
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VERIFICATION

STATE OF NEW YORK )  
COUNTY OF SUFFOLK ) SS.:

CYNTHIA L. HERBST, being duly sworn, deposes and says that deponent is the Plaintiff in this action and has read this complaint; deponent knows its content and knows that it is true to the best of deponent's knowledge, except as to those matters stated to be upon information and belief, and as to those matters deponent believes them to be true.

  
CYNTHIA L. HERBST

Sworn to before me this  
13<sup>th</sup> day of August, 2018.

  
NOTARY PUBLIC

ALEXANDRIA M. PARKER  
Notary Public, State of New York  
No. 02PA6369968 – Suffolk County  
Commission Expires January 22, 2022

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